

# Firing Employees for the Things They Post on Facebook



- “How could I have assumed that a release on a Facebook page would be grounds for dismissal?”
- “Facebook is a social networking site, it is merely the equivalent of having an online conversation. It is as public as . . . standing in the middle of the University . . . hallway and saying the exact same thing.”

These comments from employees fired for making derogatory postings on Facebook are a stark reminder of the 2 dangerous assumptions employees typically make about their free speech rights:

**Assumption 1:** I have the right to say whatever I want to about the company and people I work for when I’m off duty.

**Assumption 2:** Because they’re private, my employer can’t fire me for my social network communications, blogs, etc.

It’s only when employees face actual discipline that they realize just how wrong their assumptions are.

## **What the Law Really Says**

The internet is many things, but a private forum isn’t one of them. Employee social media and internet postings disparaging the company or its personnel aren’t the exact same thing as venting with a co-worker over beers after work. In the words of one court, “where the internet is used to display commentary or opinion, the individual doing so must be assumed to have known there is potential for virtually world-wide access to those statements.”

Thanks to over a decade of court rulings, we know that employee online communications, whether made on- or off-duty, become grounds for termination when they:

- They harm or have the potential to harm the employer’s reputation and business;
- Render employees unable to perform their duties, e.g., discriminatory statements by police officers, teachers or others in a position of public trust;
- Lead co-workers to refuse or be reluctant to work with the employee; and/or
- Make it hard for the company to manage its work or staff efficiently.

## 13 Employees Who Crossed the Line

Since 2007, there have been literally dozens of cases finding employee internet postings just cause for termination. And while mitigating circumstances, e.g., length of service, lack of a disciplinary record, remorse, absence of a workplace social media policy, etc., have allowed a few employees to keep their jobs, we haven't found a single case ruling that otherwise offensive communications were permissible because they happened to be made online. On the contrary, making the comment online where all the world can see it is precisely what makes the action worthy of discipline. Here's a quick rundown of a baker's dozen of the leading cases.

### 1. Employee Calls Her Supervisor "Nurse Ratchet" on Her Blog (Alberta)

**Offence:** Nurse makes disparaging remarks about her supervisor on her blog, referring to her at one point as "Nurse Ratchet," the iconic evil nurse from *One Flew Over the Cuckoo's Nest*.

**Ruling:** Just cause to terminate. A blog isn't a private communication. And even though the blogger didn't mention her by name, she gave enough information to figure out who "Nurse Ratchet" was and where she worked [*Alberta v Alberta Union of Provincial Employees (R. Grievance)*, [2008] A.G.A.A. No. 20].

### 2. Employees Trash Their Company by Name on Facebook (BC)

**Offence:** Employees disparage the garage where they work by name on Facebook, calling it a "f\*\*\*\* joke" and urging others not to spend their money there because "they are f\*\*\*\* crooks and greedy low life scumbags out to hose you."

**Ruling:** These and similar postings were a direct attack against the company made to almost 377 people, including other garage employees and just cause to terminate [*Lougheed Imports Ltd. v United Food & Commercial Workers Union, Local 1518*, 2010 CanLII 62482 (BC L.R.B.)].

### 3. Employee Disparages Management on Facebook (Québec)

**Offence:** Residential health care facility employee claims the workplace is a "hell" and singles out the director and several managers for negativity, bullying and mismanagement.

**Ruling:** Although the Facebook postings violated the employee's duty of loyalty and professional conduct, termination reduced to 7-month suspension given the employee's immediate removal of the postings, apology and lack of evidence of any actual damage to the residence [*Syndicat démocratique des salarié(e)s de la résidence St-Jude et La Résidence St-Jude (9210-9719 Québec inc.) (Vickyán Tardif)*, 2018 QCTA 593].

### 4. Nursing Aide Discloses Private Patient Information on Blog (Ontario)

**Offence:** Personal caregiver at home for the aged makes inappropriate comments about and publishes private information and photos of residents without their consent. Her blog is also laced with profanity-laced criticisms of the home and her co-workers.

**Ruling:** Court rejects union comparison of blog postings to comments employees typically make over lunch and upholds termination for breach of confidentiality, insubordination and unprofessional conduct [[Chatham-Kent \(Municipality\) v. CAW-Canada, Local 127](#), 2007 CarswellOnt 5078].

### 5. Pilot Makes Racist Remarks on Facebook (Federal)

**Offence:** Pilot for airline serving mostly First Nations passengers makes derogatory comments about First Nations peoples on his Facebook page.

**Ruling:** Pilot wasn't a racist. He apologized, expressed genuine remorse and quickly took down the postings—mitigating factors that entitled him to 4 months' salary and benefits. But in addition to the potential damage to the airline's business, the comments undermined very damaging to the airline, undermined his employer's trust and made his continuing employment untenable [[Wasaya Airways LP v. A.L.P.A.](#), 2010 CarswellNat 6233, [2010] C.L.A.D. No. 297].

#### **6. Child Care Professional Rips Colleagues, Discloses Confidential Information on Blog (Federal)**

**Offence:** Employer confronts child care professional for making nasty comments about co-workers and disclosing internal emails on her blog. She refuses to take down the postings or apologize and defends her actions as an exercise of free speech.

**Ruling:** The employee's postings and failure to appreciate the harm they caused irrevocably destroyed the employment relationship and constituted just cause to terminate [*Alberta v. Alberta Union of Provincial Employees (2011)*, 213 LAC 4<sup>th</sup> 299].

#### **7. Employee Threatens Supervisor, Insults Company on Blog (Federal)**

**Offence:** Ramp agent posts a series of offensive and abusive comments about the company and her supervisor on Facebook, including threats to kick him in the genitals and spit in his face. Refusal to apologize and past performance problems make her case even more precarious.

**Ruling:** Arbitrator finds just cause to discipline for disloyalty and insubordination but cites mitigating factors, including provocation and lesser discipline meted out to other employees for similar offences. While reinstatement is out of the question, the arbitrator awards the employee one month's notice and orders the airline to expunge the dismissal letter from her file [[Groves v Cargojet Holdings Ltd.](#), [2011] C.L.A.D. 257].

#### **8. Postal Clerk Makes Violent and Inflammatory Remarks about Supervisors on Facebook (Federal)**

**Offence:** *"DIE BITCH DIE. I'm playing with the Voo Doo doll and if I wasn't drunk, I'd take it to the driveway and run the bitch over."* This was just one of many Facebook postings made by a CP clerk targeting her supervisors, one of whom became so upset upon learning of the communications that he needed medical treatment.

**Ruling:** The employee had 30+ years of service. But coupled with her refusal to apologize, the postings were so offensive and so poisonous to workplace relations that her termination was justified [[Canada Post Corp. v. CUPW](#), [2012] C.L.A.D. No. 116].

#### **9. Employee Wages Sustained Verbal Assault against Supervisor on Social Media (Federal)**

**Offence:** An employee accuses her supervisor of lying and being unprofessional. She also questions his competence and personal hygiene.

**Ruling:** Just cause to terminate. The comments were so nasty and so sustained that they destroyed the employee's working relationship with the supervisor beyond repair [*Campeau v Yellow Quill First Nation*, [2014] C.L.A.D. No. 217].

## 10. Employee Posts Discriminatory Slurs on Blog (BC)

**Offence:** 22-year-old employee posts discriminatory remarks about “those good for nothing people from South Asia aka INDIA” on his blog.

**Ruling:** Discipline warranted but termination is too extreme given the employee’s immaturity (the arbitrator dismisses the remarks as “the reckless ranting of an emotionally impulsive young person”) and his immediate apology [*EV Logistics v Retail Wholesale Union, Local 580 (Discharge Grievance)*, [2008] B.C.C.A.A.A. No.22].

## 11. Employee Posts Sexist and Racist Comments on Twitter (Ontario)

**Offence:** Junior level employee tweets a series of tasteless jokes mocking women, homeless people, the disabled and other disadvantaged groups, which are cited in national newspaper reporting calling out the Toronto fire force for its supposedly unwelcoming culture.

**Ruling:** Damage to the employer’s reputation justifies for cause termination [*City of Toronto v. TPFPA, Local 3888 (Bowman)*, Unreported, Nov. 12, 2014].

## 12. Employee Criticizes Company by Name on Facebook (Newfoundland)

**Offence:** Frustrated by what she perceives to be her company’s slowness in investigating a near miss incident, an employee posts a lengthy Facebook post criticizing the company and 2 of its managers by name (whom she describes as the “half-retarded baymen manager” and “f\*\*\*\* stupid retarded half French bayman.” Graphic threats of physical violence add to the overall effect.

**Ruling:** Just cause to terminate the employee for disparaging the company and its reputation and making the managers fear for their safety [[Communications, Energy and Paperworkers Union of Canada, Local 64 v Corner Brook Pulp and Paper Limited](#), 2013 CanLII 87573 (NL LA)].

## 13. University Employee Posts Anti-Semitic Comments on Facebook (Ontario)

**Offence:** University warns employee that his long running tirade of anti-Semitic comments on Facebook must stop. He ignores the warning and makes a post criticizing the university for disciplining him.

**Ruling:** University justified in concluding that further progressive discipline would be futile and firing him instead [[York University Staff Association v York University](#), 2018 CanLII 41354 (ON LA)].